



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2012-0346; FRL-9932-04-Region 8

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a May 11, 2012 State Implementation Plan (SIP) submission from the State of Colorado that is intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (Act or CAA) for the 2006 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). This submission addresses the requirement that Colorado's SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. EPA is determining that Colorado's existing SIP contains adequate provisions to ensure that air emissions in Colorado do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state, or interfere with another state's measures to prevent significant deterioration of air quality or to protect visibility. EPA is also approving the portion of Colorado's submission that addresses the CAA requirement that SIPs contain adequate provisions related to interstate and international pollution abatement.

DATES: This final rule is effective on **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0346. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-7104, clark.adam@epa.gov.

I. Background

On September 21, 2006, EPA promulgated a final rule revising the 1997 24-hour primary and secondary NAAQS for PM_{2.5} from 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 35 $\mu\text{g}/\text{m}^3$ (October 17, 2006, 71 FR 61144).

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years (or

such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the “implementation, maintenance, and enforcement” of such NAAQS. EPA refers to these specific submittals as “infrastructure” SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS. For the 2006 24-hour PM_{2.5} NAAQS, these infrastructure SIPs were due on September 21, 2009. CAA section 110(a)(2) includes a list of specific elements that “[e]ach such plan submission” must meet.

The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called “good neighbor” provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two elements under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (element 3) to prevent significant deterioration of air quality or (element 4) to protect visibility. CAA section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

On May 11, 2012, the Colorado Department of Public Health and Environment (CDPHE) submitted an interstate transport SIP which concluded that Colorado meets all of the requirements of CAA section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5} NAAQS.¹ The State's May 11, 2012 interstate transport submission and June 4, 2010 infrastructure SIP certification for the 2006 24-hour PM_{2.5} NAAQS both overlooked the requirements of CAA section 110(a)(2)(D)(ii), which requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). The State submitted a clarification letter on March 12, 2015, which explained that the State had inadvertently left discussion of 110(a)(2)(D)(ii) out of the 2006 24-hour PM_{2.5} infrastructure certification.² EPA proposed approval of all 110(a)(2)(D)(i) and 110(a)(2)(D)(ii) elements of Colorado's May 11, 2012 submission on May 12, 2015 (80 FR 27121).

II. Response to Comments

EPA did not receive any comments on the May 12, 2015 proposal.

III. Final Rule

EPA is approving all four interstate transport elements of CAA Section 110(a)(2)(D)(i) from Colorado's May 11, 2012 submission. This approval is based on EPA's finding that emissions from Colorado do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state and that the existing Colorado

¹ Colorado's SIP, dated May 11, 2012, is included in the docket for this action.

² Colorado's certification letter is available in the docket for this action.

SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5} NAAQS.

EPA is also approving the 110(a)(2)(D)(ii) portion of Colorado's submission, based on our finding that the State's existing SIP is adequate to meet the requirements of this element for the 2006 24-hour PM_{2.5} NAAQS.

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 23, 2015.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 -APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G – Colorado

2. Section 52.352 is amended by adding paragraph (c) to read as follows:

§52.352 Interstate transport.

* * * * *

(c) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding 2006 PM_{2.5} Standards for all four of the CAA section 110(a)(2)(D)(i) requirements submitted by the Governor's designee on May 11, 2012.